notice. It is the duty of the court to construe an Act so as to give effect to the intent of Parliament and, in enacting section 55, Parliament obviously intended that a company should have a period of at least fourteen days after it had received notice that the commissioner intended to investigate its affairs within which to show cause why such an investigation should not be made. It appears to me that the date of the notice must be the date on which it becomes an effective notice under the section — that is the date when the notice is actually served on the company or if sent by post is deemed to be served in accordance with section 146 of the Life Insurance Act and section 29 of the Acts Interpretation Act. As service of the present notice was effected on Monday 3rd May, that is the date of the notice. To comply with section 55, the period specified in the notice had to be a period of not less than fourteen days from 3rd May."

Webb J. has this to say:—

"If, as the respondent submits, any actual notice, however short, would comply with section 55 of the Life Insurance Act 1945, provided the notice specified a period of not less than fourteen days from the date appearing in the notice, then this express provision of a minimum period was a waste of words, as actually it achieved nothing. But that result is reached only if we insist on reading "date of the notice" in section 55 as referring to the date specified in the document, and not to the date of actual notice, i.e. of service of the notice. The latter meaning is, I think, open and should be taken to be that intended by Parliament."

On the other hand, Latham C.J. said:—

"The word "notice" may, it is true, mean either a document or a notification to a person in the sense of bringing a matter to his knowledge or giving him means of knowledge thereof. Section 146 of the Act provides an example of the use of the word in these two senses. In my opinion it is not possible, consistently with the terms of section 55, to construe the word "notice" in the phrase "the date of the notice" as meaning the date of service of the notice in writing upon the company. The section provides that the commissioner may serve on the company "a notice in writing." There must be a period specified "in the notice." The notice there mentioned must be the notice in writing. That period must be a period of not less than fourteen days from "the date of the notice," which must also refer to the before-mentioned notice in writing. Unless there is a date of that notice this requirement of the section cannot be satisfied. In my opinion there is no justification for in effect altering the words of the section by what is described as construction so as to give to the words "date of the notice" the meaning "date of service of the notice."

Section 430 of the National Land Code defines the word "notice" to include any notification, instrument or other document authorised or required by this Act to be served on any person or body.

Section 431(1) then provides the various methods of service of notices. In paragraph (d) it says that a notice may be served on a person for the purposes of this Act by sending the notice by a pre-paid registered post to a person at an address for service given. It then goes on to say in paragraph 2 of the said section that a notice served by a pre-paid registered post in paragraph (d) of sub-section 1 above shall be deemed to have been served at a time when the letter containing the notice would be delivered in the ordinary course of the post. There is however, a proviso to this which says that where the letter is returned through the post undelivered the notice shall not be deemed to have been served.

I am of the view, following the reasoning of the High Court of Australia in the *Associated Dominions Assurance Society Proprietary Ltd.* v. *Balmford,*[1] with which I with respect agree, that "the date of the notice" in Form 19C of the National Land Code must be intended to mean the date the notice was communicated to the appellant i.e. the date it was served on her. In the circumstances, the period of one month must be reckoned from the 6th April 1966 the date of the service and the caveat was therefore still in force when the originating summons was filed in the High Court on 8th April 1966 and also when the collector purported to remove the caveat on the 29th April 1966.

This appeal is therefore allowed, the decision of the High Court set aside, the respondent will pay the costs of this appeal and the costs in the High Court.

Barakbah L.P. concurred.

MacIntyre J.: I have had the advantage of reading the judgment of the Chief Justice, Malaya, in this appeal and I am in entire agreement with it.

Appeal allowed.

Solicitors: *K. L. Devaser & Co.; Arulanandom & Co.*

CHUA MUI NEE v. PALANIAPPAN

[F.C. (Barakbah L.P., Azmi C.J. and Raja Azlan Shah J.) January 27, 1967]

[K.L. — Federal Court Civil Appeal No. X40 of 1966]

Marriage — Common law — Marriage between Hindu man and Chinese woman — Ceremony in Indian temple — Ceremony sufficient to constitute Hindu marriage — Lex loci — Validity of marriage — Polygamous marriage.

The appellant a Chinese Buddhist married the deceased, a Nattakottai Chettiar and a Hindu, according to Hindu rites at a temple in Malacca in 1943. After the marriage they lived as husband and wife at Malacca and they had 3 children.

The respondent claimed to be the son of the deceased by his first wife. According to the respondent the deceased married his mother in India in 1925 and there were two children by the marriage — the respondent and his sister. The respondent alleged that the deceased had been to India three times after the war and had told them that he had taken a woman in Malaya but was not married to her. The respondent accordingly applied for letters of administration to the estate of the deceased and the applicant lodged a caveat. The matter then went up before Gill J. who held that the appellant was not the lawful widow and her children not the lawful children of the deceased as some of the essential items of a marriage ceremony had not been complied with when the appellant married the deceased. On appeal,

Held: (1) as the deceased was a Hindu and the appellant a Chinese Buddhist the law which governed the marriage between them was not Hindu law but the law of Malacca in 1943;

(2) there was a marriage according to Hindu customs and although there was an imperfect marriage ceremony that did not affect the validity of the marriage as it was performed during the Japanese occupation;

(3) the consent of the first wife even if it was essential for the validity of such marriage could be inferred for the circumstances of the case.

Cases referred to:—

(1) *Deivanai Achi* v. *Chidambaram Chettiar* A.I.R. 1954 Mad. 657 at p. 665.

(2) *Isaac Penhas* v. *Tan Soo Eng* [1953] M.L.J. 73.

(3) *Carolis de Silva* v. *Tim Kim* (1902), 9 S.S.L.R. appendix p. 8.

FEDERAL COURT.

J. F. McWilliam for the appellant.

V. K. Palasuntharam for the respondent.

Cur. Adv. Vult.

Barakbah L.P.: This is an appeal from the judgment of Gill J., whereby it was held that the appellant was not the lawful widow, and her children not the lawful children, of Subramanian Chettiar, otherwise called Lena Subramanian Chettiar, who died on 16th July, 1960, at No. 39 Tranquerah Pantei I, Malacca. The deceased was also known as Suppiah Chettiar.

It was alleged by the appellant that in the year 1943, during the Japanese occupation, she was residing with her brother who was a mandore on an estate at Machap Estate belonging to the firm of P.S. under the charge of Subramanian Chettiar, the deceased. She came to know the deceased in the course of his visits to the estate. The deceased approached the appellant's brothers Chua Poi Poh and Chua Bah Chee for the appellant's hand in marriage and after consultation amongst the appellant's brothers and family it was decided to allow them to marry and the marriage was duly solemnized at the Chettiar Temple called Cheng Temple in Malacca. The marriage the appellant went through was according to Hindu rites. After the marriage they lived together as husband and wife, first at a house in Tranquerah Road, Malacca, and then in a house at Limbongan, Malacca, where two children were born, a daughter named Meena and a son called Somu. After the birth of the son the deceased returned to India, having made arrangements for the appellant to stay with a Chinese friend named Chu Chai Siah at No. 114 Jonker Street, Malacca, and for one Indian to pay her $260 per month. He came back after two years and lived with her at No. 48 Banda Hilir. In 1950 he bought her a house No. 39 Tranquerah Pantei I, where they lived until his death on 16th July, 1960. While they were in this house their third child, a daughter called Seetha, was born.

According to the respondent the deceased and his mother were married in India in 1925. He was born in 1927 and there was also a daughter, named Meena Achi, his younger sister. He was a Nattukottai Chettiar and a Saivite Hindu. During the Japanese occupation the deceased was in Malaya and the respondent's mother, sister and himself were in India. There was no communication between them and the deceased. After the war deceased returned to India three times and told them that he had taken a woman in Malaya and there were two children by her. He also said, when asked whether any marriage had taken place, that there was no marriage. In December, 1960, respondent came to Malaya and stayed at No. 103 First Cross Street, Malacca. Later he went and stayed with the appellant in her house. He was there for about three months and left because of a misunderstanding as to who should apply for letters of administration of the deceased's estate. He wanted to apply alone, but the appellant wished to be joined in the application. He objected and applied for letters of administration alone. The appellant lodged a caveat and then proceedings were commenced.

When the respondent was in India he used to correspond with his Malayan sister Meena. He said: "I was affectionate to Meena and the other children. It was in that spirit I wrote my letters to Meena". He went on to say: "I admit that Meena and the other children are my father's children and feel affection towards them, but they are not legitimate children". The deceased lived most of his adult life in Malaya and was a Malayan citizen at the time of his death. In his evidence the respondent stated: "I have seen my father's passport in which it is stated that he was domiciled in Malaya".

In my view, the question before this court is not whether there has been "*justae nuptiae justum matrimonium*" but whether there has been a marriage.

According to the evidence a sort of ceremony in the Indian Temple did take place and the learned trial judge took the view that as some of the essential items of ceremony were not performed, such as invocation before the sacred fire and the taking of seven steps, it did not constitute a valid Hindu marriage — see *Mulla* on Hindu Law (12th edition) at page 615, paragraph 437 and the case of *Deivanai Achi* v. *Chidambaram Chettiar.*[1] The learned judge had dealt fully with the question of marriage according to Hindu religion in his judgment and, with respect, I agree with him but only where the parties concerned professed the Hindu religion. In the present case husband and wife were of different religions. The husband was a Hindu and the wife a Buddhist. There was no evidence that she embraced the Hindu religion. She still retains her Chinese name. Therefore, in my opinion the law which governs such a marriage

should not be Hindu law but should be the *lex loci*, the law of the place where the marriage was contracted. The marriage took place in Malacca which was then a part of the Colony of the Straits Settlements. The law applicable was the law and custom established in the Straits Settlements during that time. The trial judge held that had the deceased not been previously married it would be correct to hold that this was a valid common law marriage as the law of England recognised only common law monogamous marriage. He referred to the case of *Isaac Penhas* v. *Tan Soo Eng*,[2] a Privy Council decision, where it was held that the common law of England was in force in Singapore in 1937 (and therefore in force in Malacca in 1943, Malacca being then a part of the Colony of the Straits Settlements).* In that case the question which the court had to decide was "was there a valid marriage according to the laws of the Colony as the marriage was celebrated between a Jew and a non-Christian Chinese in a modified Chinese form".

In the present case, as I have said earlier, the question is not whether there had been *justae nuptiae justum matrimonium* but whether there had been a marriage. At the time the marriage was celebrated between the deceased and the appellant, Hindu law and custom permitted polygamous marriages in India but then the question arose as to whether the consent of the first wife must be obtained before the second marriage could take place. According to *Gupta's* Hindu Law (2nd edition) page 900:—

"It has been held that a Hindu may marry again though he has a wife or wives living without his wife's consent and although no justification, such as the sterility of the wife, exists, unless custom prevents such marriage without such consent. In such a case her consent must be obtained and other conditions if any required must be fulfilled."

It was alleged by the respondent that no such consent was obtained. But assuming that consent was necessary it must be remembered that the second marriage took place during the Japanese occupation when communications within Malaya itself were difficult, let alone with the outside world and movements were very restricted. How then could the deceased contact his wife in India? But according to the respondent the deceased went back to India three times after the war and told them he had taken a woman in Malaya and there were two children by her. The respondent used to correspond with his Malayan sister and when he came to Malaya he stayed with the appellant at her house. In my view, having regard to the circumstances existing at that time and by the conduct of the wife and children in India, consent could be inferred. According to the appellant during all the time that she lived with the deceased and bore him children he held her out to both his Chinese and Chettiar friends as his wife. He took her to Chettiar functions as his wife — photographs Exhibits P.9, P.10 and P.11. The Chettiar community regarded her and her children as the deceased's wife and children. When he died she informed her husband's family in India and there was correspondence between the respondent and her daughter Meena. Her evidence was supported by her daughter Meena. It is not disputed that there was cohabitation between them as man and wife and continued till his death in her house. There was evidence that they attended Chettiars' functions together as husband and wife. There was a marriage according to Hindu customs, and although it was an imperfect marriage ceremony one should realize that it was performed during the most trying and difficult times of Japanese occupation when movements of an individual as well as a community were stringently restricted.

As was said by Lord Oaksey in *Isaac Penhas* v. *Tan Soo Eng, supra,* at page 76:—

"Abraham Penhas was dead and in such circumstances it would, in their Lordships' opinion, be altogether wrong to invalidate a marriage so solemnized followed as it was by years of cohabitation as man and wife and to bastardize the two children of the marriage, even if the other evidence were equivocal as to the status intended."

It was stated in *Carolis de Silva* v. *Tim Kim*:—[3]

"The law will presume a contract of marriage from evidence of cohabitation with the habit and repute of matrimony without any or with imperfecct formalities for its commencement."

Also it is quoted in *Gour's* Hindu Code (3rd edition) at page 299:—

"In case of conflict between persons belonging to different religions, the courts apply the rules of justice, equity and good conscience presumed the legality of a marriage if it was in fact performed."

It is therefore my view that it would be against these principles to regard the children of the deceased as illegitimate children. I would therefore allow the appeal with costs here and in the court below.

Azmi C.J. (Malaya) and **Raja Azlan Shah J.** concurred.

Appeal allowed.

Solicitors: *Laycock & Ong; V. K. Palasuntharam.*

* see p. 63 of the record.

JASWANT SINGH v. CENTRAL ELECTRICITY BOARD AND ANOR.

[O.C.J. (Gill J.) January 30, 1967]

[K.L. — Civil Suit No. 712 of 1963]

Tort — Negligence — Telephone wires resting on electric wires — Electrocution — Death of buffaloes — Whether buffaloes were trespassers — Buffaloes Enactment (F.M.S. Cap. 194) — Buffaloes not led by